

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 5-96:

PLUMBERS AND PIPEFITTERS LOCAL)	
UNION #41, OF BUTTE, MONTANA,)	
)	
Petitioner,)	
)	
vs.)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
)	AND RECOMMENDED ORDER
MONTANA DEPARTMENT OF)	
CORRECTIONS, MONTANA STATE)	
PRISONS,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

A hearing in the above-captioned matter convened on August 20, 1996, in Helena, Montana. The hearing was conducted under authority of Section 39-31-207, MCA, pursuant to ARM 24.26.630 and in accordance with the Montana Administrative Procedures Act, Title 2, Chapter 4, Part 6, MCA.

Petitioner Plumbers and Pipefitters Local #41, of Butte Montana was represented by John T. Forkan, Jr., Business Manager. The Respondent, Montana Department of Corrections, Montana State Prison, was represented by Bill Bentley, Labor Relations Specialist, Labor Relations Bureau, State Personnel Division, Department of Administration. Joe Rainville appeared as a witness for the Respondent. Petitioner's Exhibits 1 through 9 and Respondent's Exhibits 1-4 were

admitted into evidence without objection. Administrative notice was taken of the Petition for Unit Clarification filed by the Petitioner on January 11, 1996; the January 30, 1996 letter addressed to the Labor Mediator with the Board of Personnel Appeals from John T. Forkan, Jr.; the January 24, 1996 letter to the Board of Personnel filed by Ken McElroy with the Department of Administration; and the Order issued by Paul Melvin, Labor Mediator for the Board of Personnel, dated February 6, 1996.

II. ISSUE

The primary issue in this case is to determine whether the "boilermaker" position number 00027 assigned to the maintenance unit at the Montana State Prison should be properly included in the Plumbers and Pipefitters Local Union #41, of Butte, Montana bargaining unit.

III. FINDING OF FACT

1. Plumbers and Pipefitters Local Union #41 of Butte, Montana, filed a petition for unit clarification with the Montana Board of Personnel Appeals on January 10, 1996. The reason for petition is to incorporate the position of "welder" located in the maintenance unit at Montana State Prison, Deer Lodge, into the bargaining unit at the prison that is currently represented by the Petitioner. The "welder" position is formally classified as Position # 00027, Boilermaker (hereinafter "boilermaker").

2. The maintenance unit located at the Montana State Prison consists of from thirteen to fourteen employees. The unit includes various craft workers including machinists, electricians, painters, carpenters and plumbers in addition to the "boilermaker" position. There is one "boilermaker" position and two plumber/pipefitter positions assigned to the unit.

3. All maintenance unit workers including the "boilermaker" and plumber/pipefitter positions fall under the same line of supervision at Montana State Prison. The boilermaker and plumber/pipefitter positions receive similar compensation and benefits which are generally provided in the standard contract for state employees which is enacted by the legislature.

4. From 1980 to 1987, the individual employed in the "boilermaker" position had been a member of Boilermakers Union Local #11. The individuals employed in the plumber/pipefitter positions were members of the petitioners union (Plumbers and Pipefitters Local No. 41). During that period, the individuals employed in the "boilermaker" position and the plumber/pipefitter positions were covered by a collective bargaining agreement that was jointly administered by the Petitioner and Boilermakers Local #11. The two union bodies jointly administered the contract as a matter of convenience.

5. Under the contract terms, however, the Plumbers and Pipefitters Union and the Boilermakers Union performed different duties and responsibilities specific for their particular craft members. Such differences can be found at Article 3 of the contract which addresses jurisdictional disputes (X-C): Article 3 of the contract speaks to the area of jurisdictional disputes:

If a jurisdictional dispute with any craft arises including those between the signatory unions to this agreement, it shall not be subject to the grievance or arbitration clauses but shall first be submitted to local business agents for settlement and then, if no understanding of the agreement is reached within forty-eight (48) hours, it will be referred in writing to the International Unions involved for settlement. It is agreed that there shall be no stoppage or abandonment of work in regard to any jurisdictional dispute. Existing international jurisdictional agreement shall be respected by parties to this agreement.

This language can be compared to the language in the current contract (Exhibit D):

If a jurisdictional dispute with any craft arises, it shall not be subject to the grievance or arbitration clauses but shall first be submitted to local business agents for settlement and then, if no understanding of the agreement is reached within forty-eight (48) hours, it will be referred in writing to the International Unions involved for settlement. It is agreed that there shall be no stoppage or abandonment of work in regard to any jurisdictional dispute. Existing international jurisdictional agreement shall be respected by parties to this agreement.

Obviously, the Article 3 language from the contract recognized the craft jurisdictional problems that may have

arisen due to the fact there were two distinct craft bargaining units covered under the collective bargaining agreement. When the Boilermakers were no longer a party to the contract, the specific language, "....including those between the signatory unions to the this agreement...." was removed because the possibility of those specific types of jurisdictional problems was non-existent.

6. In 1987, Boilermakers Union #11 withdrew its recognition as one of the administrators of this agreement. Since 1987, the "boilermaker" position has not been represented by a bargaining unit. Presently, it is the only position assigned to the maintenance unit that does not belong to a collective bargaining unit.

7. Since 1987, the plumber/pipefitter positions at the Montana State Prison have continued to be represented by the petitioner under a collective bargaining agreement. Each of the other various crafts workers in the maintenance unit also belong to respective unions representing their particular crafts with separate collective bargaining agreements. There are several individuals in the unit classified as general maintenance workers who belong to the Correctional Officers Union with a separate bargaining agreement.

8. The individual working in the "boilermaker" position primarily works alone with separate and distinct duties. The position does have an occasional interchange of

duties with the other craft workers including the plumbers/pipefitters.

9. The "boilermaker" position and the plumber/pipefitter positions at Montana State Prison are dissimilar concerning their respective position descriptions (Exhibit A and D). The "boilermaker's" position requires a person to have thorough knowledge of all types of metal work including welding, cutting, layout, sheet metal fabrication, and installations of finished or manufactured products. The position description (Exhibit A) states that the required knowledge, skill, and ability are typically acquired through graduation from a vo-tech school's welding/metal fabrication certification program, along with completion of a boilermaker apprenticeship. In addition, the position must possess a Stationary Engineer's license.

10. The plumber/pipefitter position description requires a person to have thorough knowledge of all types of plumbing/pipefitter work including layout, installation, fabrication and testing of finished or manufactured products. The position description (Exhibit B) states that the knowledge, skills, and abilities of the position are typically acquired through graduation from a vo-tech school's plumbing/pipefitter certification program along with the completion of a formal plumber/pipefitter apprenticeship. In

addition, the incumbent must possess a Montana Plumber's license and a Montana Water Manager's license.

11. The training and education requirements of the "boilermaker's" and plumber/pipefitter's positions are completely different. Thus, a plumber/pipefitter is not permitted to perform tasks typically assigned to boilermaker and a boilermaker is not permitted to perform tasks typically assigned to a plumber/pipefitter at the Montana State Prison.

12. The "boilermaker" position is assigned to perform specific duties that are separate and distinct from those assigned to the plumber/pipefitter's positions. The boilermaker, in addition to other duties, must perform general building and machinery repair and minor construction, within all areas of the metal trades. The position must train inmates in all aspects of the metal trades and maintain all equipment such as welders, brakes, shears, that are used in the metal trades (Exhibit A).

13. The plumbers/pipefitters must perform general building and equipment repair along with minor construction within all areas of the plumbing and piping trades. The plumbers/pipefitters also train inmates in all aspects of plumbing trades, maintain all equipment used in the plumbing and piping trades and maintain a sanitary sewage system.

14. The petitioner represents a worker at the Montana State Hospital, Warm Springs under a collective bargaining

agreement, who performs some of the same welding tasks and duties assigned to the "boilermaker" position at the Montana State Prison. The petitioner submitted a copy of the collective bargaining agreement for the position at the Montana State Hospital which they indicated, in effect, would be identical to the one they would incorporate for the "boilermaker" position at the Montana State Prison.

15. Currently the "boilermaker" position at the Montana State Prison is occupied by Joe Rainville who has been employed in that capacity for past nineteen (19) years. Mr. Rainville completed the contractor's apprenticeship boilermaker program through the Boilermakers Union during the 1970's. He has never been a member of the Plumbers/Pipefitters Local #41. He indicated that during the course of his employment, he has had infrequent contact and interchange with members of the Plumbers and Pipefitters Union at the work place. He does not believe that his interests would be better served if he joined the union. He has no special desire to be represented by petitioner.

IV. DISCUSSION\RATIONALE

Montana law at 39-31-202, MCA, authorizes the Board of Personnel Appeals to determine an appropriate bargaining unit and describes the factors to be considered. Specifically it states:

39-312-202. Board to determine appropriate bargaining unit-factors to be considered. In order

to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

It is the petitioner's position that the evidence in this case reveals that there is a "community of interest" between the "boilermaker" position and the petitioner's bargaining unit at Montana State Prison. The petitioner argues that the record demonstrates it can not only adequately represent the "boilermaker" position, but can also provide other employment opportunities should the position ever be eliminated.

The respondent on the other hand, believes the Plumbers/Pipefitters union is not an appropriate collective bargaining unit for the inclusion of the "boilermaker" position for two reasons: 1) The position does not share a "community of interest" with the Plumbers/Pipefitters, and, 2) the individual who has occupied the "boilermaker" position for the past seventeen years does not desire to be included in petitioner's bargaining unit.

Board of Personnel Appeals properly uses Federal Court and National Labor Relations Board precedence as guidelines

for interpreting the Public Employee Collective Bargaining Act (the Act) because the Act is so similar to the federal Labor Management Relations Act (LMRA).

State Department of Highways v. Public Employees Craft Council, 165 Mont. 349, 529 P.2d 785 (1974), 87 LRRM 2101; AFSCME Local 2390 v. City of Billings, 171 Mont. 20, 555 P.2d 507, 93 LRRM 2753 (1976); State ex rel. Board of Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d 1117, 103 LRRM 2297 (1979); Teamsters Local 45 v. State ex rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981), City of Great Falls v. Young (Young III), 221 Mont. 13, 686 P.2d 185, 119 LRRM 2682 (1984).

"Community of interest" among employees has been and continues to be the measure of appropriate bargaining units. Brown & Root, Inc., 258 NLRB 1002, 108 LRRM 1188 (1981).

While the individuals employed in the "boilermaker" and plumber/pipefitter positions receive similar pay and job benefits, it is important to note that such benefits and pay rate schedules are enjoyed by many of the public workers employed statewide in Montana whether or not they are a members of a collective bargaining unit. While both positions are subject to the same line of supervision, such, by itself, is not determinative in establishing a "community of interest".

There is no "community of interest" between the "boilermaker" position and the plumber/pipefitter positions within the maintenance unit at the Montana States Prison. The "boilermaker" position has separate and distinct duties from the plumber/pipefitter position. The "boilermaker" and plumber/pipefitter workers do not work outside their specific job classifications and, as a result, do not exchange assigned duties. The "boilermaker" position requires different training and job skills from the plumber/pipefitter positions. There is infrequent contact and interchange between the "boilermaker" and the plumber/pipefitter at the work place. The petitioner's union is not the appropriate bargaining unit for the "boilermaker" position when applying the "community of interest" factors.

Weight is given to the prior "bargaining history factor" for inclusions/exclusions to bargaining units. Dallas Morning News, 285 NLRB No. 106, 126 LRRM 1346 (1987).

The boilermaker and plumber/pipefitter positions have always been represented by separate and distinct bargaining units, at the Montana State Prison, as have all the various craft workers in the maintenance unit. Until 1987, the "boilermaker" position had been represented by Boilermaker Union #11, whereas, the plumber/pipefitter positions were represented by Plumbers and Pipefitters Local Union #1.

The "boilermaker" and plumber/pipefitter positions had been covered under one contract for collective bargaining purposes from 1980 to 1987. However, it was only as a matter of practicality and convenience for the unions jointly to administer a contract with only one "boilermaker" and two pipefitters assigned to the maintenance unit. Language in the jointly administered contracts always recognized the two distinct craft bargaining units and the potential jurisdictional problems that could have arisen.

Since 1987, the boilermaker worker has always maintained a separate identity and has never been represented by the plumber/pipefitter's union for collective bargaining purposes. Under the circumstances, the "boilermaker" position has not had a bargaining history of being included in the same bargaining unit as the plumber/pipefitter positions.

Another factor under consideration in deciding appropriate bargaining units is the desires of the employees. The desires of the employees were addressed in Employer Petition #1-86:¹

The Board of Personnel has long placed great weight on the desires of employees when making determinations on appropriate units for collective bargaining. There is no reason to discontinue doing so. Under Section 39-31-

¹ Support Service Division Lewis and Clark County and City of Helena, Petitioner, Lewis and Clark county Sheriff Employees' Association, Respondent, AFSCME, Council No. 9, Local No. 2280, Respondent. (August 1986).

201 MCA the policy of the state is best promoted by allowing employees' desires considerable weight.

The individual who has been employed in the "boilermaker" position for the past 17 years does not believe his interests would better be served either monetarily or otherwise if he joined this union. He does not desire to belong to a union that does not primarily represent the individuals employed in the boilermaker trade.

IV. RECOMMENDED ORDER

Unit clarification No. 5-96 is dismissed.

DATED this _____, October, 1997.

BOARD OF PERSONNEL APPEALS

By:

Michael T. Furlong
Hearing Officer

NOTICE: Pursuant to ARM 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than _____. This time period includes the 20 days provided for in ARM 24.26.215, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 6518
Helena, MT 59604

* * * * *

CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day served upon the following parties or such parties' attorneys of record by depositing the same in the U.S. Mail, postage prepaid, and addressed as follows:

John Forkham, Jr., Business Manager
Plumbers & Pipefitters Local Union No. 41
PO Box 3172
Butte, MT 59702

Dan Evans, Personnel Director
Montana State Prison
600 Conley Lake Rd
Deer Lodge, MT 59722

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day, served upon the following parties or such parties' attorneys of record by means of the State of Montana's Deadhead mail service.

Bill Bentley
Labor Relations Bureau
Room 130 - Mitchell Building
Helena, MT 59620

DATED this _____ day of October, 1997.